

Paul K. Stecker (PS 4892)
PHILLIPS LYTLE LLP
Suite 3400, One HSBC Center
Buffalo, New York 14203
Tel.: (716) 847-8400
Fax: (716) 852-6100
pstecker@phillipslytle.com

Attorneys for Respondent
HSBC Bank USA, N.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA RUX, *et al.*,

Case No. 08 Civ. 6588 (AKH)

Petitioners,

-against-

ABN-AMRO Bank N.V., *et al.*,

Respondents.

**RESPONSE OF HSBC USA, N.A. TO PETITIONERS'
MOTION FOR IMMEDIATE TURNOVER OF FUNDS**

INTRODUCTION

Respondent HSBC Bank USA, N.A. (“HSBC”) responds as follows to
Petitioners’ Motion for Immediate Turnover of Funds filed December 10, 2008. As stated
below, HSBC takes no position with respect to petitioners’ request to turnover the funds listed in
their motion, but asks the Court to direct (i) that the funds HSBC paid into the Court’s Registry

- 2 -

in August 2008 be returned to it and (ii) that HSBC's expenses in this proceeding be reimbursed out of any funds the Court determines to be payable to petitioners.

RELEVANT PROCEDURAL HISTORY

Pursuant to the Court's Order Regulating Proceedings filed July 29, 2008, HSBC paid \$3,472,146.27 into the Court's Registry on August 25, 2008. These funds represented the proceeds of the wire transfers in excess of \$50,000.00 listed in Exhibit E-7 to petitioners' Order to Show Cause filed April 21, 2008.

Pursuant to the Court's Order With Respect to Giving Notice of Turnover Proceeding filed September 10, 2008, HSBC provided notice, as specified therein, to certain parties who might claim an interest in the funds represented by the above-referenced wire transfers. An objection and claim with respect to the funds represented by one of the transfers was filed by Commercial Bank of Ethiopia and Sudanese Petroleum Corporation (the "Ethiopian claimants") on November 14, 2008 (document No. 64).

HSBC'S POSITION

As we read petitioners' motion, they are requesting the Court to turnover to them only the funds represented by the accounts and wire transfers specifically identified in their motion, none of which were held by HSBC. HSBC accordingly takes no position with respect to petitioners' turnover request.

Because petitioners have not requested the turnover of any of the funds that were paid into the Court's Registry by HSBC, those funds should be returned to HSBC, which will

- 3 -

continue to hold them pursuant to OFAC's Sudanese Sanctions Regulations. Such a direction would be consistent with the Government's position that "[t]hese assets must be returned to the banks that originally blocked them, and OFAC will promptly issue a license to facilitate such transfers by the Court" (Statement of Interest of the United States of America filed November 21, 2008 [document No. 132], p. 12).

Although HSBC believes that any funds that are not paid to petitioners should be returned to the respective banks in accordance with the Government's position, HSBC does not know whether the Ethiopian claimants agree with that position, or whether they will request the Court to determine their claim to the funds as to which they have filed an objection and claim. HSBC takes no position with respect to this question, should the Ethiopian claimants make that request.

HSBC incurred out-of-pocket expenses totaling \$3,651.40 for the cost of providing notice as required by the Court's Order With Respect to Giving Notice of Turnover Proceeding filed September 10, 2008. These expenses consist of \$1,162.45 for packages sent by DHL courier (see statements and checks attached hereto as Exhibit A), \$688.57 for HSBC's share of translation costs and \$1,800.38 for HSBC's share of the cost of the published notices to potential claimants (HSBC's payments for its share of those expenses are documented by the checks attached hereto as Exhibit B). These expenses should be deducted from any funds disbursed to petitioners in accordance with the Court's Order Regulating Proceedings Filed

- 4 -

July 29, 2008, par. 5 (“Costs of effecting notice shall be taxed against the ultimate disbursement of the accounts”).

DATED: January 9, 2009

PHILLIPS LYTLE LLP

By: s/ Paul K. Stecker
Paul K. Stecker (PS 4892)
Suite 3400, One HSBC Center
Buffalo, New York 14203
(716) 847-8400
pstecker@phillipslytle.com

and

437 Madison Avenue, 34th Floor
New York, New York 10012
(212) 759-4888

Attorneys for Respondent
HSBC Bank USA, National Association